

MICHAEL FAILLACE & ASSOCIATES, P.C.
 Michael Faillace [MF-8436]
 110 East 59th Street, 32nd Floor
 New York, New York 10022
 (212) 317-1200
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----X
 MARLON CASTRO, OCTAVIO RANGEL,
 MARTIN VASQUEZ, ALFREDO MARTINEZ,
 RODOLFO MENDEZ, GERARDO ANGULO, JUAN
 MARTINEZ, JOSE CERVANTES, SERGIO
 SANCHEZ, ISRAEL SANCHEZ, MARTINE PEREZ,
 GUILLERMO MENDOZA, OMAR CASTILLO, and
 AMANDO MARTINEZ, individually and on behalf
 of others similarly situated,

Plaintiffs,

-against-

SPICE PLACE, INC., SPICE AVE., INC.,
 BANGKOK PALACE II, INC., SPICE CITY, INC.,
 SPICE WEST, INC., KITLEN MANAGEMENT,
 INC., JUTTANA RIMREARTWATE,
 THANADHAM THANEESAENGSI, KARNDA
 VAJIRABANJONG, KEVIN LEATHERS,
 KITTIGRON LIRTPANARUK, YONGYUT
 LIMLEARTVATE, and YUANYONG
 RIMREARTWATE,

Defendants.

-----X
 STATE OF NEW YORK)
) ss.
 COUNTY OF NEW YORK)

Humberto Otelita, being duly sworn, says:

1. I am a plaintiff in this matter and submit this affidavit in support of the plaintiffs' motion for collective action and class certification.

07 CV 4657 (RWS)(DFE)

**AFFIDAVIT OF
 Humberto Otelita**

**FLSA COLLECTIVE
 ACTION**

Rule 23 Class Action

ECF Case

2. I am a resident of Queens County, New York.

3. I was employed as a delivery person at the Spice restaurant at 1411 Second Avenue from November 2001 until approximately July 2004.

4. I worked from approximately 11:00 am until 11:30 pm Sunday through Wednesday, and 11:00 am until 1:00 am on Friday and Saturday. I had Thursdays off.

5. I was never allowed to take a meal break.

6. Although I was classified and compensated a delivery person, I was required to perform other duties such as stocking items in the storage room, cutting vegetables, chopping shrimp and chicken, and cleaning.

7. I had to spend approximately 30 minutes at the end of each day cleaning the kitchen.

8. I made \$130 per week when I first started. I received a raise to \$135 after six months, and to \$140 by the time I left.

9. All other delivery persons, including Humberto Badillo, Jorge Rosas, Ramiro Lopez, Caterino de lo Santos, and Jose Castillo, had to prepare food, stock the storage room, clean the kitchen and work the same hours as I did.

10. I received tips from customers, but was never told that the tips would be counted towards my salary.

11. I was compensated only with cash.

12. I was required to record my arrival and departure times with a punch card.

13. I was required to purchase a bicycle, cell phone, and uniform shirts for use as a deliver person with my own money. I also had to pay to repair my bicycle.

14. I never saw any minimum wage posters at Spice.

Case 1:07-cv-04657-RWS

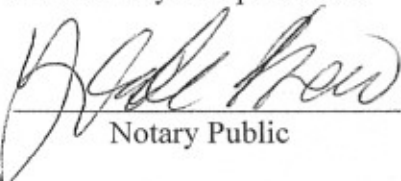
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Filed 05/22/2008

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Humberto Otclita

Sworn to before me
this 12th day of April 2008.


Notary Public

YOLANDA RIVERO
Notary Public, State of New York
No. 02RI6061584
Qualified in Queens County
Commission Expires July 16, 2011

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Notary Public, State of New York
No. 02RI6061584
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VAJIRABANJONG, KEVIN LEATHERS,
KITIGRON LIRTPANARUK, YONGYUT
LIMLEARTVATE, and YUANYONG
RIMREARTWATE,

Defendants.

-----X
STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

Humberto Badillo Morales, being duly sworn, says:

1. I am a plaintiff in this matter and submit this affidavit in support of the plaintiffs' motion for collective action and class certification.

07 CV 4657 (RWS)(DFE)

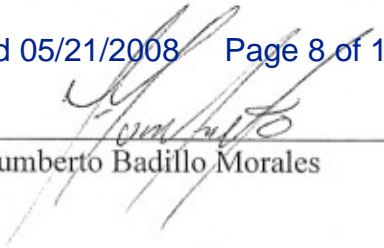
**AFFIDAVIT OF
Humberto Badillo
Morales**

**FLSA COLLECTIVE
ACTION**

Rule 23 Class Action

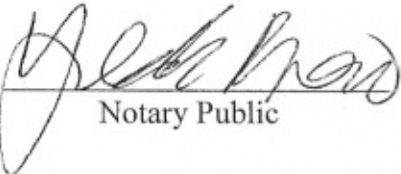
ECF Case

2. I am a resident of Queens County, New York.
3. I was employed as a delivery person from approximately 2002 to approximately March 2005 at the Spice restaurant location at 1411 Second Avenue.
4. I worked from approximately 11 am to 11:30 pm Sunday through Thursday, and 11 am to 1 am on Friday and Saturday—with Wednesdays off.
5. I was not allowed to take a lunch break.
6. Although I was a delivery person, I was also required to perform other duties—including stocking the storage room, preparing food, and cleaning.
7. At the end of each day, I had to spend approximately half an hour cleaning the kitchen.
8. I was paid \$150 per week.
9. The other delivery persons at 1411 Second Avenue—including Ramiro Lopez, Martine Perez, Jose Castillo, Humberto Otlica, Jorge Rosas, Caterino de los Santos—had the same additional duties and worked the same hours as I did.
10. I received tips from customers, but I was never told that they would be counted toward my salary.
11. I was always paid in cash.
12. I recorded my arrival and departure times each day on a punch card.
13. I never saw any minimum wage posters at the restaurant.
14. I had to purchase a cell phone and bicycle with my own money to use in making deliveries.



Humberto Badillo Morales

Sworn to before me
this 12th day of April 2008.



Notary Public

YOLANDA RIVERO

Notary Public, State of New York

No. 02RI6061584

Qualified in Queens County

Commission Expires July 16, 2011

EXHIBIT D

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LIMLEARTVATE, and YUANYONG
RIMREARTWATE,

Defendants.

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

Jorge Rosas, being duly sworn, says:

1. I am a plaintiff in this matter and submit this affidavit in support of the plaintiffs' motion for collective action and class certification.

07 CV 4657 (RWS)(DFE)

AFFIDAVIT OF

Jorge Rosas

**FLSA COLLECTIVE
ACTION**

Rule 23 Class Action

ECF Case

2. I am a resident of Bronx County, New York.
3. I was hired as a delivery person in early 2004 at the Spice restaurant located at 1411 Second Avenue (the "1411 Second Avenue location").
4. I worked from 11:00 am to 11:30 pm daily—except I stayed until 12:00 or 12:30 am on Fridays and Saturdays—with Mondays off.
5. There was no formal lunch break, and if I tried to eat a meal the manager would interrupt me when a delivery had to be made.
6. Although I was hired and paid as a delivery person, I was also required to prepare food and stock the storage room in addition to making deliveries from 11:00 am to 6:00 pm. After 6:00 pm, I made deliveries full-time.
7. I also had to clean the restaurant for approximately 30 minutes at the end of each day.
8. The other delivery persons at 1411 Second Avenue—including Umberto Badillo, Martine Perez, Jose Castillo, Umberto Otilica, and Ramiro Lopez—worked the same schedule as I did and were also required to prepare food, stock the storage room, clean, and make deliveries.
9. I was paid \$160 per week cash.
10. I was required to purchase a bicycle, cell phone, and uniform t-shirts (first t-shirt free) with my own money.
11. I received tips from customers, but I was never told that the tips would be counted toward my salary.
12. I was always paid with cash until approximately February 2006, when Spice began paying me by check.

13. The checks did reflect that I received tips—although I was never given an explanation for this.

14. Spice never asked me for my social security number, and the social security number shown on my paychecks was invented by Spice.

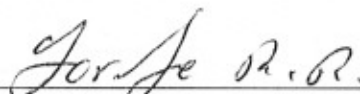
15. Around January 2006, Tom, the chef, told me that I could only work 40 hours per week at the 1411 Second Avenue location, and that I would have to go to another Spice location if I wanted additional hours.

16. On one occasion, I worked one day at the Spice Chelsea restaurant at 199 8th Avenue while working at the 1411 Second Avenue location the rest of the week.

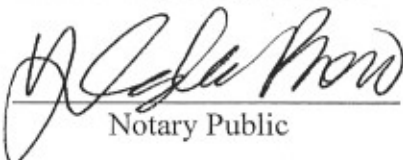
17. I currently work only 40 hours per week at the 1411 Second Avenue location— from approximately 11:00 am to 11:30 pm Wednesdays and Thursdays, 4:00 pm to 12:30 am on Fridays, and 4:00 pm to 11:00 pm on Sundays.

18. My departure and arrival times were recorded on a punch card.

19. I never saw any minimum wage posters until approximately 2006.


Jorge Rosas

Sworn to before me
this 12th day of April 2008.


Notary Public

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